

REMARKS

Claims 12-22 have been cancelled. New Claims 76-77 have been added. Claims 1, 7, 8, 23, and 65 have been amended to merely define the invention with more clarity. None of the amendments provided herein are believed to narrow the claims. Additionally, Applicant asserts that all amendments are supported by the application-as-filed and that no new matter has been added. Claims 1-11, 23-30, and 65-77 are now in the application. Reconsideration of the application is requested in light of the foregoing amendments and following remarks.

Rejection of Claims under 35 U.S.C. '102(b)

Claims 1, 4, 6-7, 9-12, 15, 17-18, 20-30, 65, 70-71, 73-75 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by Day, U.S. Patent No. 5,632,095 (hereinafter the '095 reference). Applicant respectfully traverses the rejection.

Independent Claim 1 teaches a bundle of elongate pieces of lumber product. Respective ones of the individual pieces of lumber product have stud locator markings at one or more surfaces. Further, each "stud locator marking . . . indicat[es] the positions where the front and back surfaces of respective stud lumber pieces are to intersect the . . . elongate piece of lumber . . ." Thus, Claim 1 teaches a product that facilitates accurate stud placement "at a glance," without the need for a carpenter to measure and mark "stud thickness" indicators, or to guess at the precise location where a stud should be placed.

The '095 reference does *not* teach or suggest a "stud locator marking . . . indicating the positions where the front and back surfaces of respective stud lumber pieces are to intersect the . . . elongate piece of lumber . . ." (Claim 1). Rather, the '095 reference teaches a product, which "enable[s] the carpenter to see quickly and easily *the measurements to be marked*" ('095 reference Col.1, Lines 58-59 (emphasis added)).

In the alternative, though not stated by the reference, since the markings in the reference give the general locations of the studs, in order to save time and/or effort,

the carpenter may simply guess at the precise stud location, and install the stud without making actual markings. Such act, while it can save time and/or effort, can result in inaccurate stud placement.

By contrast, in Applicant's invention, the stud locator markings are so configured that the elongate piece of lumber can generally be used "as is," providing for accurate placement of the stud, without further marking by the carpenter.

As a second point of novelty, Claim 1 teaches a bundle, a "plurality of elongate pieces . . . [including] at least one strap securing . . . [the] pieces of lumber together" The '095 reference does not teach or suggest such.

Specifically, the '095 reference does not teach or suggest at what time during the lumber refining process the taught "marking lines and corresponding numerals" are applied. The Examiner may not assume the timing. Further, the Examiner may not assume that the "marking lines and corresponding numerals" are applied at a lumber mill, then organized into bundles, which are subsequently secured by at least one strap, as the reference does not teach or suggest such. Such a conclusion is reached only by impermissibly stacking inferences on one another; none of which are present in, or suggested by the '095 reference, or any other reference of record.

Nor may the Examiner assume that a lumber yard will print the "marking lines and corresponding numerals," onto the lumber pieces. Even if the lumber yard does print the marking lines, the Examiner cannot further assume that the lumber yard will subsequently package the pieces into bundles, then secure the bundles with at least one strap, as the reference does not teach or suggest such. Assuming a lumber yard does run the lumber through a printing machine, the operator of the lumber yard may not wish to incur the cost of organizing the printed lumber into bundles, then securing the bundles with at least one strap. Again, such a conclusion is reached only by impermissibly stacking inferences on one another.

Applicant thus submits that Claim 1 is separately patentably distinct over all references of record on the bases of both (i) a strapped printed bundle of lumber and (ii) stud locator markings indicating positions for front and back surfaces of studs. Withdrawal of the rejection is respectfully requested.

Claim 4 stands rejected as anticipated under 35 U.S.C. § 102(b) by the '095 reference. Applicant believes that Claim 4 defines over the '095 reference, as depending from allowable Claim 1. Further, Claim 4 stands on its own merits. Claim 4 teaches not only the bundle and at least one strap in Claim 1, but further teaches "stud locator markings at about 24 inches leading edge-to-leading edge."

In contrast, the '095 reference teaches "visible marking lines" at 24 inch intervals. These marking lines "enable the carpenter to see . . . the measurements to be marked" ('095 reference Col. 1, Lines 58-59). Thus, the '095 reference teaches and suggests a product, which requires manual measuring and marking of exact stud locators (depicting the nominal thickness of a stud).

The aforementioned practice of manually marking top and bottom plates of a wall assembly, is contrary to the scope of Applicant's invention. Applicant's invention allows laborers to quickly and accurately position studs during wall assembly, without additional stud location markings being marked at the construction site.

In view of the foregoing, Applicant believes that Claim 4 is allowable. Withdrawal of the rejection is respectfully requested.

Claim 6 stands rejected as anticipated under 35 U.S.C. § 102 (b), by the '095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 1. As previously stated, Applicant believes that Claim 1 defines over the '095 reference. However, Claim 6 also stands on its own merits, in addition to the patentability provided through Claim 1.

Claim 6 teaches "sets of 2 side-by-side stud locator markings . . . along the lengths of . . . framing lumber product[s]." In contrast, the '095 discloses "visible marking lines" at "preselected intervals, such as 12 inches, 16 inches, and 24 inches . . ." ('095 reference Col. 1, Lines 53-54). The '095 reference does not teach or suggest any pre-printed stud locator markings, "indicating the positions where the front and back surfaces of respective stud lumber pieces are to intersect the ... elongate piece of lumber" (Claim 1). Nor does the '095 reference teach or suggest a "set of 2 side-by-side" such markings. Accordingly, Applicant believes that Claim 6 is allowable. Withdrawal of the rejection is respectfully requested.

Claim 7 has been amended to recite framing lumber product "substantially devoid of any marking indicators away from the stud locator markings." Applicant does not concede that the '095 reference teaches any stud locator markings, which indicate the position where the front and back surfaces of a stud are to intersect the elongate piece of lumber.

But, for the sake of completeness of analysis, even if one did concede that some of the marks in the '095 reference were stud locator markings, the '095 reference does not teach a product "substantially devoid of any location marking indicators away from the stud locator markings" as claimed in Claim 4. For instance, the '095 reference discloses a "lumber product . . . [having] marking lines spaced at ½" intervals . . . " ('095 reference Col.1 Lines 50-51, Col. 4 Line 4). Indeed, the '095 reference does not teach *any* embodiment devoid of such markings.

For example, under the teachings of the '095 reference, an eight foot framing stud could be expected to have approximately 192 lines per edge, on the "face" of the stud. Further, the '095 reference teaches marking lines adjacent *both* edges of the face; the two rows "are separated down the middle longitudinally by an unmarked section" ('095 reference Co.2, Lines 4-5). Thus, the '095 reference teaches a lumber product with as many as 192 lines in each of 2 rows "per face," or 384 total lines. Obviously, 384 lines on a piece of lumber *cannot* be considered "substantially devoid of any marking indicators away from the stud locator markings."

Consider how different the '095 reference product, and Applicant's invention would appear in an *actual* wall framing assembly. First, consider how the '095 reference's product would appear on the bottom plate of a "framed up" wall. Some of the "stud marking lines," and "other marking lines" would not be visible, as they would be directly covered by studs. So, if standard dimension 2x4 studs were used, approximately 1.5" of markings lines would be covered per stud placement. However, the remainder of the bottom plate would show a vast number of "visible marking lines and corresponding numerals." Therefore, the '095 reference does NOT teach or suggest a product substantially devoid of any marking indicators away from the stud locator markings.

In sharp contrast, consider the appearance of Applicant's invention used as the bottom plate of a "framed up" wall. A stud locator marking of the present invention

is visible, optionally partially covered, adjacent the stud. However, the remainder of the bottom plate appears substantially devoid of other markings. An observer would generally see "wood" (or other material comprising the lumber product), NOT pre-printed lines and numerals.

In view of the foregoing, Applicant believes that Claim 7 is allowable. Withdrawal of the rejection is respectfully requested.

Claims 9-11 stand rejected as anticipated under 35 U.S.C. § 102 (b), by the '095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 1. As previously stated, Applicant believes that Claim 1 defines over the '095 reference. However, Claims 9-11 also stand on their own merits, in addition to the patentability provided through Claim 1.

Claim 9 teaches a bundle of lumber product, each piece of lumber product having stud locator markings, and being devoid of other marking indicators extending more than half way across the width. In addition, Claim 9 teaches that the stud locator markings be readily visually distinguished, by non-color appearance differences from other markings. See for example, FIGS. 2 and 3 of Applicant's drawings.

The '095 reference does not teach or suggest such a product. In fact, the opposite is true. Specifically, the '095 reference teaches the use of "numbers and visible marking lines [which] may be differentiated by a contrasting color or design" ('095 reference Col. 2, Lines 25-26). The contrasting color or design "enable[s] the carpenter to easily distinguish the measurement units" ('095 reference Col. 2, Lines 28-39). Thus, the '095 reference acknowledges the problem of marking line clutter. However, the '095 reference *does not* teach or suggest solving the marking line clutter problem by making a lumber product, which is "substantially devoid of any marking indicators away from the stud locator markings."

Claims 10-11 teach stud locator markings with leading edge lines, trailing edge lines; crossing lines between the leading and trailing edge lines, and crossing lines extending from one leading edge to the corresponding trailing edge, respectively. The '095 reference does not teach or suggest such. A product covered by the '095 reference is intended to be a "measuring tool" in addition to being a building material.

Additional numerous crossing lines on a product with an already intricate display of a plethora of markings lines (like the '095 reference), would likely result in a very

complex appearance, which requires high attention to detail for accurate use. By contrast, the point of Applicant's invention is to provide lumber products, which are simple, accurate, cost effective, and require less attention to detail for accurate use.

In view of the foregoing, Applicant believes that Claims 9-11 are allowable. Withdrawal of the rejection is respectfully requested.

Claim 23 has been amended to recite a framing lumber product "substantially devoid of any marking indicators away from the stud locator markings." Applicant does not concede that the '095 reference teaches any stud locator markings, which define a position for placement, on an elongate piece of lumber, of an end of a stud dimension lumber piece.

But, for the sake of completeness of analysis, even if one did concede that some of the marks in the '095 reference were stud locator markings, the '095 reference does not teach a product "substantially devoid of any location marking indicators away from the stud locator markings." For instance, the '095 reference discloses a "lumber product . . . [having] marking lines spaced at ½" intervals . . . " ('095 reference Col.1 Lines 50-51, Col. 4 Line 4). Indeed, the '095 reference does not teach *any* embodiment devoid of such markings. Clearly a product with such numerous markings *cannot* be "substantially devoid of any marking indicators away from the stud locator markings." Please see the above discussion of the patentability of Claim 7 for a related analysis. Accordingly, Applicant believes that Claim 23 is allowable. Withdrawal of the rejection is respectfully requested.

Claims 24-26 stand rejected as anticipated under 35 U.S.C. § 102 (b), by the '095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 23. Applicant believes that amended Claim 23 defines over the '095 reference, and obviates the rejection to Claims 24-26. However, Claims 24-26 also stand on their own merits, in addition to the patentability provided through Claim 23.

Claims 24-26 teach framing lumber products having stud locator marking leading edge-to-leading edge spacings of about 8", about 16", and about 24", respectively, and wherein the lumber piece is otherwise substantially devoid of any marking indicators away from the stud locator markings. In contrast, the '095 reference teaches the aforementioned array of other markings, in addition to the stud locator markings.

In view of the foregoing, Applicant believes that Claims 24-26 are allowable. Withdrawal of the rejection is respectfully requested.

Claims 27-28 stand rejected as anticipated under 35 U.S.C. § 102 (b), by the '095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 23. Applicant believes that amended Claim 23 defines over the '095 reference. However, Claims 27-28 also stand on their own merits, in addition to the patentability provided through Claim 23.

Claim 27 teaches precision for the placement of stud locator markings. Specifically, Claim 27 teaches "variations in spacing between said stud locator markings . . . consistently no more than 0.13 inch leading edge to leading edge." By contrast, the '095 reference fails to teach or suggest such limitation. There is no mention of precision required to produce a product covered by the '095 reference. It is impermissible for the examiner to assume that precision is disclosed by the '095 reference, then to additionally assume the magnitude of the assumed precision.

Further, in order to arrive at the current invention, the examiner necessarily assumes that the precision is to be applied to stud locator markings, which are scribed by the carpenter according to the '095 reference. Such a conclusion is reached only by impermissibly stacking inferences on one another; which inferences are not present in the '095 reference.

Claim 28 generally tracks the recitation of Claim 6. Thus, the analysis of patentability of Claim 28 is the same analysis of patentability of Claim 6 *supra*. In view of the foregoing, Applicant believes that Claims 27-28 are allowable. Withdrawal of the rejection is respectfully requested.

Claims 29-30 stand rejected as anticipated under 35 U.S.C. § 102 (b), by the '095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 23. Applicant believes that amended Claim 23 defines over the '095 reference. However, Claims 29-30 also stand on their own merits, in addition to the patentability provided through Claim 23.

Claims 29-30 generally track the recitations of Claims 10-11, respectively. Thus, the analysis of the patentability of Claims 10-11 *supra*, is equally applicable to Claims 29-30. Accordingly, Applicant believes that Claims 29-30 are allowable. Withdrawal of the rejections is respectfully requested.

Independent Claim 65 originally recited that each stud locator marking “defin[es] a position for placement, on said elongate piece of lumber, of an end of a stud dimension lumber piece having opposing front and back surfaces and a thickness dimension therebetween” For clarity and emphasis, Claim 65 has been amended to recite that the stud locator “markings comprising a leading edge and a trailing edge, said leading edge and said trailing edge, on a given said stud locator marking, being separated by a distance generally defined by at least a standard nominal stud thickness.”

The ‘095 reference does not teach or suggest such a stud locator marking. The ‘095 reference teaches a “measuring scale” type device, and teaches measuring and physically marking stud locations; and thus “enable[s] the carpenter to see quickly and easily the measurements to be marked.” Thus, under the ‘095 reference, any placement markings, which correspond to nominal stud thickness must be manually measured and marked. Accordingly, Applicant believes that Claim 65 is allowable. Withdrawal of the rejection is respectfully requested.

Claims 70, 71, and 73 stand rejected as anticipated under 35 U.S.C. § 102 (b), by the ‘095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 65. Applicant believes that amended Claim 65 defines over the ‘095 reference. However, Claims 70-71 also stand on their own merits, in addition to the patentability provided through Claim 65.

Claims 70, 71, and 73 parallel Claims 6, 7, and 9 respectively. Thus, the above discussion of patentability of Claim 6 is equally applicable to Claim 70; the above discussion of patentability of Claim 7 is equally applicable to Claim 71; and the above discussion of patentability of Claim 9 is equally applicable to Claim 73. Accordingly, Applicant believes that Claims 70, 71, and 73 are allowable. Withdrawal of the rejection is respectfully requested.

Claims 74-75 stand rejected as anticipated under 35 U.S.C. § 102 (b), by the ‘095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 65. Applicant believes that amended Claim 65 defines over the ‘095 reference. However, Claims 74-75 also stand on their own merits, in addition to the patentability provided through Claim 65.

Claims 74-75 parallel Claims 10-11, respectively. Thus, the above analysis of patentability of Claims 10-11 is equally applicable to Claims 74-75. Accordingly, Applicant believes that Claims 74-75 are allowable. Withdrawal of the rejection is respectfully requested.

Rejection of Claims under 35 U.S.C. '103(a)

Claims 2, 3, 5, 8, 13, 14, 16, 19, 66-69, and 72 stand rejected under 35 U.S.C. § 103 (a) as unpatentable for obviousness over the '095 reference.

With respect to claims 2, 3, 5, and 8, the examiner has failed to meet the required initial burden for such rejection. Specifically, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." (MPEP 2142). "If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." (MPEP 2142).

The Examiner not only failed to produce evidence, but actually failed to address the obviousness assertion of claims 2, 3, 5, and 8. Nowhere in the Office Action does the Examiner discuss what in these claims is obvious about the "bundle of framing lumber," with at least one strap.

The only discussion of obviousness in the Office Action relates to the stud locating markers and their respective placement. Thus, the Examiner failed to meet the required burden with respect to claims 2, 3, 5, and 8. Although not obligated to do so, Applicant will still address the issue of obviousness in relation to claims 2, 3, 5, and 8.

Claims 2 and 3 stand rejected as obvious under 35 U.S.C. § 103 (a) in light of the '095 reference. Applicant believes that Claims 2 and 3 define over the '095 reference, as depending from an allowable claim. Further, Claims 2 and 3 stand on their own merits. Claims 2 and 3 teach not only the bundle and at least one strap in Claim 1, but further teach stud locator markings spaced at about 8 inches and 16 inches respectively.

Claims 2 and 3 teach a bundle; at least one strap; stud locator markings (which correspond to the nominal thickness of a stud); and the spacing of such markings. The '095 reference fails to teach or suggest *any* of these limitations.

First, as depending from Claim 1, Claims 2 and 3 teach "a bundle," and "at least one strap." The '095 reference fails to teach or suggest such. The Examiner may not assume that: *first*, "marking lines and corresponding numerals" were applied at a lumber mill; *second*, the elongate pieces of lumber are organized into bundles; and *third*, the bundles are subsequently secured by at least one strap, as the reference does not teach or suggest such. Such a conclusion is reached only by impermissibly stacking inferences on one another.

Nor may the Examiner assume that a lumber yard will print the "marking lines and corresponding numerals," onto the lumber pieces. Even if the lumber yard does print the marking lines, the Examiner cannot further assume that the lumber yard will subsequently package the pieces into bundles, then secure the bundles by at least one strap, as the reference does not teach or suggest such. Assuming a lumber yard does run the lumber through a printing machine, the operator of the lumber yard may not wish to incur the cost organizing the printed lumber into bundles, then securing the bundles with at least one strap.

Again, such a conclusion is reached only by impermissibly stacking inferences on one another. Simply stated, there is no objective motivation to modify the '095 reference as suggested by the Examiner. Accordingly, Applicant believes that Claims 2 and 3 are allowable. Withdrawal of the rejection is respectfully requested.

Claim 5 stands rejected as obvious under 35 U.S.C. § 103 (a) in light of the '095 reference. Applicant believes that Claim 5 defines over the '095 reference, as depending from an allowable claim. Further, Claims 5 stands on its own merits.

Claim 5 teaches a bundle of framing lumber product, with the individual framing lumber pieces having a specified precision for the placement of stud locator markings. Specifically, Claim 5 teaches "variations in spacing between said stud locator markings . . . consistently no more than 0.13 inch leading edge to leading edge."

The Examiner stated that:

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to mark the studs at the desirable interval(e.g. 8", 16") and adjust the variation in spacing between the stud locator markings on the studs being consistently no more than 0.13", since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum or working ranges involves only routine skill in the art. (Office Action Mailed 4/9/03; pages 3-4 (discussing *In re Aller*, 105 USPQ 233)).

However, Examiner's interpretation of *In re Aller* is misapplied in the instant case. In *In re Aller*, the "[c]laimed process which was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was held to be *prima facie* obvious over a reference process which differed from the claims only in that the reference process was performed at a different temperature and acidity; namely at a temperature of 100°C and an acid concentration of 10%" (MPEP § 2144.05 II.A. (discussing *In re Aller*, 105 USPQ 233)). Thus, *Aller* specified limits on first (temperature) and second (acidity) parameters.

In contrast to *In re Aller*, on which the Examiner relies, the '095 reference gives NO GUIDANCE, does not even address, any accuracy parameter for placement of either the visible marking lines (printed) on the piece of lumber, or the stud locator markings (applied by the carpenter). In fact, the '095 reference suggests no control over precision of the placement of any marks, other than the teaching that the carpenter will make the stud locator markings. Thus, the '095 reference relies on the skill of the person making the markings at the construction site; as well as on that person's judgment regarding the necessary level of accuracy. Since the '095 reference never addresses the specified parameter, *In re Aller* simply does not impact to the analysis of patentability of Claim 5.

Further, judgment of precision at the construction site, as taught by the '095 reference, is *precisely* the type of conventional teaching which is improved upon by the instant invention.

The '095 reference teaches and suggests applying "stud locator markings" (corresponding to the nominal thickness of a stud) ONLY AFTER the visible marking lines have been applied. Therefore, the '095 reference suggests that application of stud locator markings, and their placement accuracy should only be an issue when the carpenter measures, and marks the stud placement. It is impermissible for the examiner to assume that precision is disclosed by the '095 reference, then to further assume the magnitude of the assumed precision. Such a conclusion is reached only by impermissibly stacking inferences on one another; none of which are present in the '095 reference, or any reference of record.

In view of the foregoing, Applicant believes that Claim 5 is allowable. Withdrawal of the rejection is respectfully requested.

Claim 8 stands rejected as obvious under 35 U.S.C. § 103 (a) in light of the '095 reference. Applicant believes that Claim 8 defines over the '095 reference, as depending from an allowable claim. Further, Claims 8 stands on its own merits.

Claim 8 teaches a bundle of framing lumber product, the individual framing lumber pieces "being substantially devoid of location marking indicators away from ... [the] stud locator markings." However, the '095 reference teaches and suggests THE OPPOSITE. For instance, the '095 reference discloses first: visible marking lines; second: "*additional visible marking lines*" at other intervals ('095 reference Col.1, Line 54); third: numerals which correspond to the marking lines ('095 reference Col.3, Line 48-49); fourth: additional lines to be scribed by the carpenter at the work site ('095 reference Col.1, Line 59, "measurements to be marked"). Therefore, the '095 reference teaches away from a product devoid of markings away from "stud locator markings." Rather, it teaches and suggests only *adding more markings*, NOT avoiding markings to make a product "substantially devoid of any location marking indicators away from the stud locator markings."

A product covered by the '095 reference would be more expensive to make, purchase, and use than the Applicant's invention. First, it would be more expensive to make. There are numerous marks and numerals taught by the '095 reference, which are *expressly devoid* on Applicant's invention. Per volume or weight, ink is more expensive than framing lumber. Therefore, as the volume of ink applied to

framing lumber goes up, so does the expense of making such lumber. Of course, the cost of additional ink is only one factor, which would increase costs.

As stated *supra* in the Remarks (*see* the discussion related to the 102(b) rejection of Claim 27), Applicant does NOT concede that the '095 reference teaches or suggests "stud locator markings . . . indicating the positions where the front and back surfaces of respective stud lumber pieces are to intersect the . . .elongate piece of lumber . . ." (Claim 1). Nor does Applicant concede that the '095 reference teaches or suggests an accuracy of placement of such markings. But, for the sake of completeness of analysis, even if one did concede that the '095 reference suggested such, there would be increased costs associated with setting up a more complex process (and likely machines), maintaining such process (and machines), and monitoring the product for accuracy. Considering such increased costs of production, the consumer would likely have to pay more, whereby the product could well fail in the commercial marketplace for lack of cost effectiveness.

Besides production costs, Applicant's invention offers other cost savings. Applicant's invention provides numerous labor cost saving advantages. To fully appreciate the advantages of Applicant's invention, consider first how a product covered by the '095 reference is used.

To use a product covered by the '095 reference, one must be skilled enough to: first, locate the appropriate "visible marking line," which corresponds to where the center of a stud should be placed; second, subtract 3/4" from the stud spacing location for a "leading stud edge line" (for a 2x4 stud); third, add 3/4" to the stud spacing location for a "trailing stud edge line" (for a 2x4 stud); fourth, accurately draw indicator markings to illustrate the location of the "stud edge lines." Please note, the leading and trailing edge lines are susceptible to inaccurate markings, since the '095 reference teaches 1/2" intervals. But, the leading and trailing edge marks must be made at 3/4" from the center of the stud indicator marking. Thus, to "accurately mark" the leading and trailing edge lines on the '095 reference product, a tape measure and straight edge, such as a carpenter's square or other alignment tool/straight edge, would preferably be used.

Clearly, substantial calculation and manipulation is required at the construction site by the '095 reference; thus, the risk of error is ever-present. Unfortunately,

seemingly nominal errors can add up quickly. For instance, fractional inch errors at every stud location along a 30 foot wall can add up to several inches of errors. Obviously the overall rate of error increases as the scale of construction increases.

Now, consider Applicant's invention. Applicant's invention requires no "on site" measuring, and no "on site" scribing of stud locator markings by the construction crew, for routine stud placement. Applicant's invention thus produces more consistent results, saves labor time, and money.

In addition, the '095 would not be effective for its intended purpose if it were devoid of marking indicators, away from any "stud markings." The '095 reference is an invention "concern[ing] a lumber product, adapted for use in the measuring, cutting and assembling . . . of a house or other structure" ('095 reference Col 1, Lines 35-37 (emphasis added)). If a product under the '095 reference were devoid of additional marking lines, it would cease to be an effective tool for measuring, or determining where to make cuts. An effective measuring tool must have indicator marks away from any "stud location" markings.

In view of the foregoing, Applicant believes that Claim 8 is allowable. Withdrawal of the rejection is respectfully requested.

Claims 66-68 stand rejected as obvious under 35 U.S.C. § 103 (a), in light of the '095 reference, apparently with reference, directly or indirectly, to the rejection of Claim 65. Applicant believes that amended Claim 65 defines over the '095 reference. However, Claims 66-68 also stand on their own merits, in addition to the patentability provided through Claim 65.

Claims 66-68 each teach a framing lumber product with stud locator markings. Each stud locator marking has a "leading edge and a trailing edge . . . separated by a distance generally defined by at least a standard nominal stud thickness." Claims 66-68 further teach spacing between the stud locator markings (from leading edge-to-leading edge). The '095 reference teaches and suggests "visible marking lines" at intervals of 12, 16, and 24 inches. However, the '095 reference teaches away from printing "stud locating markers," which correspond to the thickness of a stud.

The '095 reference teaches and suggests that such a mark should be made after the "measuring type" marks are applied. For instance, at a job-site where a "carpenter can determine at a glance the measurement . . . to be taken" ('095 reference Col. 2, Lines 34-35) and marked. In fact, the '095 reference suggests the necessity of *repeatedly measuring and marking*. It recites that a product covered by the '095 reference helps when **"repeated identical measurements are needed"** ('095 reference Col. 2, Line 42).

By contrast, Applicant's invention requires no measurements, and no marks to be scribed to indicate "exact" stud location (because the stud locator markings already have leading and trailing edges separated by a distance generally defined by at least a standard nominal stud thickness). As a result, one can save time and money during the "framing" phase of construction by using Applicant's invention.

In view of the foregoing, Applicant believes that Claims 66-68 are allowable. Withdrawal of the rejection is respectfully requested.

Claims 69 and 72 parallel Claims 5 and 8 respectively. Thus, the above analysis of the patentability of Claims 5 and 8 are equally applicable to Claims 69 and 72. Accordingly, Applicant believes Claims 69 and 72 are allowable. Withdrawal of the rejection is respectfully requested.


New Claims 76 and 77 each depend from 65. New Claim 76 further defines a relationship between a leading edge and trailing edge within a first stud locator marking, and distance between the trailing edge of the first stud locator marking and the leading edge of a second locator marking. Thus, the same analysis in regards to patentability of Claim 65 equally applies to Claim 76, as well as the additional point of novelty being the distance between the trailing edge of a stud locator marking, and the leading edge of a second locator marking.

New Claim 77 relates to the visibility of a leading edge and a trailing edge of a stud locator marking, with a standard stud of nominal thickness placed on the face of an elongate piece of lumber of the present invention. As a first statement of patentability, Applicant believes that none of the references of record teach or suggest the recitations of Claims 76 and 77. Accordingly passage into allowance of Claims 76 and 77 is respectfully requested.

Applicant thus submits that all claims as presented herein are allowable over all references of record. Allowance is respectfully solicited. No fee is believed to be due. Should any fee be properly due, or if any refund is due, kindly charge same, or credit any overpayment, to Deposit Account 23-2130.

Please feel free to contact me with any questions, comments or concerns, at the telephone number listed at the end of this document.

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